



City of Seattle  
Edward B. Murray, Mayor

Department of Construction and Inspections  
Nathan Torgelson, Director

**CITY OF SEATTLE  
ANALYSIS AND DECISION OF THE DIRECTOR OF  
THE SEATTLE DEPARTMENT OF CONSTRUCTION AND INSPECTIONS**

**Application Number:** 3020012  
**Applicant Name:** Dante Palmaffy  
**Address of Proposal:** 5456 23<sup>rd</sup> Ave SW

**SUMMARY OF PROPOSED ACTION**

Land Use Application to allow two single family dwelling units in an environmentally critical area. Parking for two vehicles to be located within each structure.

The following approvals are required:

**ECA Variance** - to allow disturbance of an Environmentally Critical Area (ECA) steep slope. (Chapter 25.09.180 and 280, Seattle Municipal Code).

**SEPA - Environmental Threshold Determination** (SMC Chapter 25.05)

**SEPA DETERMINATION:**

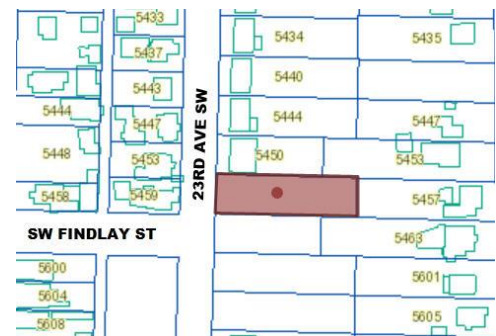
Determination of Non-significance

- ☒ No mitigating conditions of approval are imposed.
- ☐ Pursuant to SEPA substantive authority provided in SMC 25.06.660, the proposal has been conditioned to mitigate environmental impacts

**SITE AND VICINITY**

Site Zone: LowRise 1 (LR1)

Nearby Zones: North: LR1  
South: LR1  
West: LR1  
East: SF5000



ECAs: Steep Slope

Site Size: 10,906 sq ft (per survey)

### Public Comment

The public comment period ended on April 19, 2015. Comments were received and carefully considered, to the extent that they raised issues within the scope of this review. These areas of public comment related to nearby flooding, wetland and creek impacts, and disturbance to vegetation and wildlife habitat.

### ANALYSIS – ECA VARIANCE

This variance request pertains to proposed disturbance of an identified Environmentally Critical Area (ECA) steep slope and steep slope buffer. Such variances may be authorized according to the provisions of SMC [25.09.180 E](#), quoted below.

1. *Steep Slope Area Variance. The Director may reduce the steep slope area buffer and may authorize limited intrusion into the steep slope area and steep slope buffer to the extent allowed in subsection E2 only when the applicant qualifies for a variance by demonstrating that:*
  - a. *the lot where the steep slope or steep slope buffer is located was in existence before October 31, 1992; and*
  - b. *the proposed development otherwise meets the criteria for granting a variance under Section [25.09.280 B](#), except that reducing the front or rear yard or setbacks will not both mitigate the hardship and maintain the full steep slope area buffer.*

The subject lot was created prior to October 31, 1992. The referenced criteria relate to the reduction of required setbacks to provide for preservation of ECA buffers. The cited criteria are discussed below.

2. *If any buffer reduction or development in the critical area is authorized by a variance under subsection E1; it shall be the minimum to afford relief from the hardship and shall be in the following sequence of priority:*
  - a. *reduce the yards and setbacks, to the extent reducing the yards or setbacks is not injurious to safety;*
  - b. *reduce the steep slope area buffer;*
  - c. *allow an intrusion into not more than thirty percent (30%) of the steep slope area.*

The majority of the site is an environmentally critical area steep slope with a slope grade of 40% or more. As delineated, the only portions of the site that are not in a steep slope or required buffer are three areas, together totaling about 300 sq ft and located near the northwest and southwest property corners. These areas are mostly in required side setbacks which cannot be reduced through ECA variance. Therefore granting of a front setback reduction would also include a steep slope buffer reduction as the front setback reduction cannot effectively be granted without granting intrusion into the steep slope buffer.

The construction of new houses is not allowed outright in the steep slope area or the adjacent ECA buffer which is 15 feet downslope of the steep slope area. The Land Use Code requires a 7 foot average and 5 foot minimum front setback and at least 5 feet for side setbacks. The applicant proposes two modest sized houses with built-in garages to be located on the western end of the site which is mostly in a steep slope buffer although some intrusion into the steep slope is proposed.

In order to have a large enough building area for these houses, variances are warranted to allow intrusion into nearly all of the steep slope buffer on the western end of the site and to allow intrusion into portions of the steep slope. This will allow about 1230 sq. feet of intrusion into the steep slope area. This intrusion will only disturb about 14% of the site's steep slope area.

3. *The Director may impose additional conditions on the location and other features of the proposed development as necessary to carry out the purpose of this chapter and mitigate the reduction or loss of the yard, setback, or steep slope area or buffer.*

Tree removal will be allowed in the environmental critical area as part of an Environmentally Critical Area revegetation plan as provided in SMC 25.09.320 (SMC 25.11.030E). The project is approved provided the construction permit includes a revegetation plan to restore and improve vegetation and trees which may include removing non-native vegetation or invasive plants and noxious weeds by hand to prevent erosion, protect water quality or provide diverse habitat.

In addition to the provisions discussed above, SDCI may grant an ECA variance only when all of the following criteria are met, as set forth in SMC 25.09.280 B, stated below:

1. *The lot has been in existence as a legal building site prior to October 31, 1992.*

The subject lot existed as a legal building site prior to October 31, 1992.

2. *Because of the location of the subject property in or abutting an environmentally critical area or areas and the size and extent of any required environmentally critical areas buffer, the strict application of the applicable yard or setback requirements of Title 23 would cause unnecessary hardship; and*

The extent of the lot which is covered by environmentally critical area and buffer effectively precludes construction of any house on the site.

3. *The requested variance does not go beyond the minimum to stay out of the full width of the riparian management area or required buffer and to afford relief; and*

SMC 25.09.180 E modifies this provision to allow for developmental disturbance within the steep slope ECA and/or its buffer. The requested buffer reduction and small intrusion into the steep slope is a reasonable minimum to allow for development of two houses on this

multi-family zoned site. Fully reducing the front setback to zero would not allow for construction of any house due to the extensive ECA area on the site.

4. *The granting of the variance will not be injurious to safety or to the property or improvements in the zone or vicinity in which the property is located; and*

The applicant has provided a geotechnical report which provides findings and preliminary recommendations for future development on the site. Assuming development is conducted in accordance with recommendations of the geotechnical report and construction plans as approved by SDCI, the granting of the variance should not be injurious to the property or to neighboring properties.

5. *The yard or setback reduction will not result in a development that is materially detrimental to the character, design and streetscape of the surrounding neighborhood, considering such factors as height, bulk, scale, yards, pedestrian environment, and amount of vegetation remaining; and*

The construction of these two residences will not be materially detrimental to the character, design, and streetscape of the surrounding neighborhood.

6. *The requested variance would be consistent with the spirit and purpose of the environmentally critical policies and regulations.*

The requested variance achieves a reasonable protection of existing steep slope areas on this site while allowing reasonable development.

### **DECISION – ECA VARIANCE**

The requested ECA Variance to construct two houses in a steep slope area is **CONDITIONALLY GRANTED**.

### **ANALYSIS – SEPA**

The proposal site is located in an environmentally critical area, as noted above. Proposals located in landslide prone areas (i.e. known landslide areas, potential landslide areas, and steep slopes), wetlands, and fish and wildlife habitat conservation areas may require environmental review (SMC 25.05.908), thus this application is not exempt from SEPA review. However, the scope of environmental review of projects within these critical areas is limited to: 1) documenting whether the proposal is consistent with the City's Environmentally Critical Areas (ECA) regulations in SMC 25.09; and 2) Evaluating potentially significant impacts on the critical area resources not adequately addressed in the ECA regulations. This review includes identifying additional mitigation measures needed to protect the ECA in order to achieve consistency with SEPA and other applicable environmental laws.

Environmental review resulting in a Threshold Determination is required pursuant to the Seattle State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05).

The SEPA Overview Policy (SMC 25.05.665) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, and certain neighborhood plans and other policies explicitly referenced, may serve as the basis for exercising substantive SEPA authority. The Overview Policy states, in part, “*Where City regulations have been adopted to address and environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation*” subject to some limitations.

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant. The Department of Construction and Inspections has analyzed and annotated the environmental checklist submitted by the project applicant, and reviewed the project plans and any additional information in the file and any pertinent comments which may have been received regarding this proposed action have been considered. As indicated in the checklist, this action may result in adverse impacts to the environment; however, due to their temporary nature and limited effects, the impacts are not expected to be significant. Future construction and operation activities are expected to result in an increase in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming.

Codes and development regulations applicable to this proposal will provide sufficient mitigation; therefore, no further conditioning or mitigation is warranted pursuant to specific environmental policies or the *SEPA Overview Policy* (SMC 25.05.665).

### **DECISION – SEPA**

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- ☒ Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21.030(2) (c).

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW [43.21C.030](#) (2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

This DNS is issued after using the optional DNS process in WAC [197-11-355](#) and Early review DNS process in SMC 25.05.355. There is no further comment period on the DNS.

## **CONDITIONS – ECA VARIANCE**

### **Prior to Issuance of Construction Permit**

1. Provide an ECA Covenant for the site.
2. Include in the construction permit application a revegetation plan to restore and improve vegetation and trees which may include removing non-native vegetation or invasive plants and noxious weeds by hand to prevent erosion, protect water quality or provide diverse habitat.

### **Prior to Commencement of Construction**

3. Install temporary construction fencing to delimit the remaining non-disturbance area of the site. Provide evidence to the assigned Land Use Planner that the fencing is in place. Grading and other construction activities are allowed only in the area shown by the Edge of Disturbance on Sheet S-1 of the ECA Variance plan set. Tree and vegetation maintenance using hand tools, management and mitigation as shown on the approved plans are allowed throughout the site. This condition does not limit work approved under SDOT Street Improvement Permits.

## **CONDITIONS – SEPA**

None.

Jerry Suder, Land Use Planner  
Seattle Department of Construction and Inspections

Date: October 17, 2016

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## **IMPORTANT INFORMATION FOR ISSUANCE OF YOUR MASTER USE PERMIT**

### Master Use Permit Expiration and Issuance

The appealable land use decision on your Master Use Permit (MUP) application has now been published. At the conclusion of the appeal period, your permit will be considered “approved for issuance”. (If your decision is appealed, your permit will be considered “approved for issuance” on the fourth day following the City Hearing Examiner’s decision.) Projects requiring a Council land use action shall be considered “approved for issuance” following the Council’s decision.

The “approved for issuance” date marks the beginning of the **three year life** of the MUP approval, whether or not there are outstanding corrections to be made or pre-issuance conditions to be met. The permit must be issued by Seattle DCI within that three years or it will expire and be cancelled (SMC 23-76-028). (Projects with a shoreline component have a **two year life**. Additional information regarding the effective date of shoreline permits may be found at 23.60.074.)

All outstanding corrections must be made, any pre-issuance conditions met and all outstanding fees paid before the permit is issued. You will be notified when your permit has issued.

Questions regarding the issuance and expiration of your permit may be addressed to the Public Resource Center at [prc@seattle.gov](mailto:prc@seattle.gov) or to our message line at 206-684-8467.